

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARLOS MARIN, et al., *on behalf of themselves
and all others similarly situated,*

Plaintiffs,

ORDER

- against -

12 CV 5274 (ENV)

APPLE-METRO, INC., et al.,

Defendants.

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SHAUNTA DOVE, *on behalf of herself and all
others similarly situated,*

Plaintiff,

- against -

13 CV 1417 (ENV)

APPLE-METRO, INC., et al.,

Defendants.

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On October 22, 2012, Carlos Marin, Kenny Lebron, and Martina Hanisch (the “Marin plaintiffs”), on behalf of themselves and all others similarly situated, filed a Complaint against Apple-Metro, Inc., a corporation consisting of Applebee’s Restaurants located in Manhattan, the Bronx, Brooklyn, Queens, Staten Island, Westchester and Rockland Counties (“Apple Metro”). (Docket No. 12 CV 5274). The Complaint also names as defendants the individual restaurant branches,¹ as well as

¹117th Apple, LLC, 42nd Apple, LLC, AM NYCF, LLC, AT Apple, LLC, Airmont Apple, LLC, Astoria Apple, LLC, BTM Apple, LLC, Bay Plaza Apple, LLC, Bay Terrace Apple, LLC, Bed-Stuy Apple, LLC, Broadway Apple, LLC, Cortlandt Apple, LLC, Cross Country Apple, LLC, Crossroads Apple, LLC, EB Apple, LLC, Expressway Apple, LLC, Flatbush Apple, LLC, Fordham Apple, LLC, Fresh Meadows Apple, LLC, Harlem Apple, LLC, Hawthorne Apple, LLC, Jamaica

several individual defendants: Zane Tankel, Roy Raeburn, Kirk Samlal, Aubrey Daly, Roland Raymond, Derrick Palmer, Susy Quintero, and Chris Antoine (the “individual defendants”) (collectively, “defendants”). (Docket No. 12 CV 5274). On June 28, 2013, the Marin plaintiffs filed an amended Complaint, in which they alleged that defendants had violated the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. (“FLSA”), and New York Labor Law §§ 195, 215, and 650 et seq. (“NYLL”), by altering the employees’ electronic time records, and failing to pay the non-managerial employees the proper minimum and overtime wages. (Marin Compl.² ¶¶ 1, 2).

On March 18, 2013, Shaunta Dove (“Dove plaintiff”), on behalf of herself and all others similarly situated, filed a Complaint in a related action against defendants. (Docket No. 13 CV 1417). On September 24, 2013, Dove filed an amended Complaint, in which she alleged that defendants failed to pay “tipped” hourly workers minimum and overtime wages by reducing their tip credit, in violation of the FLSA and the NYLL. (Dove Compl.³ ¶¶ 1-3). On July 28, 2014, the Court conditionally certified the collective actions.

On March 10, 2015, Ms. Atavia Thomas filed a motion to intervene in the Marin and Dove

Apple, LLC, Kisco Apple, LLC, Mamaroneck Apple, LLC, New Dorp Apple, LLC, New Rochelle Apple, LLC, Outerbridge Apple, LLC, Derrick Palmer, Port Chester Apple, LLC, Queens Center Apple, LLC, Rego Park Apple, LLC, Riverdale Apple, LLC, S.I. Apple, LLC, SVC Apple, LLC, Sheepshead Apple, LLC, Triangle Apple, LLC, and White Plains Apple, LLC.

²Citations to “Marin Compl.” refer to the Marin plaintiffs’ second amended Complaint, filed June 28, 2013.

³Citations to “Dove Compl.” refer to the Dove plaintiff’s first amended Complaint, filed September 24, 2013.

actions. (Thomas Mot.⁴ at 1). Ms. Thomas was employed at the Apple-Metro restaurant located at 76 West 225th Street, Bronx, NY. (Id. at 5). Ms. Thomas alleges that she was a tipped worker who was required to spend at least 20 percent of her shift performing non-tipped “side work.” (Id.) On June 6, 2014, Ms. Thomas filed an action in the Southern District of New York, (the “Thomas Action”). (Id.) On August 8, 2014, the Thomas defendants moved to dismiss the Thomas Action, and on December 11, 2014, Ms. Thomas filed a motion for collective action notice. (Id. at 6). The Southern District Court granted defendants’ motion to dismiss Ms. Thomas’s collective action claims and ordered Ms. Thomas to either opt-in to the Marin and Dove actions, or to proceed individually in the Thomas Action. (Id.) The Southern District Court also held that, if Ms. Thomas proceeded individually in the Thomas Action, her claims would be stayed pending the resolution of the Marin and Dove actions. (Id.)

Responses to Ms. Thomas’s motion to intervene are to be filed by **April 9, 2015**. Ms. Thomas may reply by **April 30, 2015**.

The Clerk is directed to send copies of this Order to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
March 19, 2015

/s/ CHERYL POLLAK
Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York

⁴Citations to “Thomas Mot.” refer to the motion to intervene filed by Atavia Thomas on March 10, 2015.